IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1388 OF 2018

1. The Supreme Industries Ltd.,
Add. : D 101/102, MIDC Jalgaon,
Through its authorised person
Sureshkumar Chandraprakash
Mantri, Age 50 years, Occ.
Service R/o. D 101/102, MIDC
Jalgaon.

2. B.L. Tapdiya (Chairman)
Age 77 years, Occ. Business,
R/o. As above.

3. M.P. Tapdiya (Managing Director)
Age 76 years, Occ. Business,
R/o. As above.

4. S.J. Tapdiya, Age 67 years,
Occ. Business, R/o. As above.

5. V.K. Tapdiya, Age 63 years,
Occ. Business, R/o. As above.

6. Satish Bhagirath Somani,
Age 57 years, Occ. Service,
R/o. As above.

7. Sureshkumar Chandraprakash Mantri,
Age 50 years, Occupation Service,
R/o. As above. … **Petitioners**.

VERSUS

1. The State of Maharashtra.

2. Chandrakant Satish Toshniwal,
Age 34 years, Occ. Business,
R/o.21, Basment, Nath Plaza,
near Natwar Talkies, Jalgaon. … **Respondents**.

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Advocate for the Petitioners : Mr. S. G. Ladda.
APP for the Respondent No. 1 : Mr. P. K. Lakhotiya.
Advocate for the Respondent No. 2 : Mr. R.F. Totla, h/f Mr. Karwa Ramanand A.

CORAM	**:**	**MANGESH S. PATIL, J.**
RESERVED ON	**:**	**16/09/2019**
PRONOUNCED ON	**:**	**05/11/2019**

JUDGMENT :

Heard. Rule. The rule is made returnable forthwith. The learned APP waives service for respondent No. 1 and the learned advocate Mr. Totla, h/f Mr. Karwa waives service for respondent No. 2. On the request of both the sides the matter is heard finally at the stage of admission.

2. The petitioners are impugning the orders passed by the learned Additional Sessions Judge on the same day i.e. 06.08.2018 in Criminal Revision No. 02/2017 and Criminal Revision Application No. 27/2017 arising out of the same order passed by the learned Chief Judicial Magistrate in Regular Criminal Case No. 187/2015 dated 08.12.2016, whereby, in a complaint filed by the respondent No. 2 against the petitioners for the offences of forgery, cheating and misappropriation, the learned Chief Judicial Magistrate directed the process to be issued against the accused No. 7 i.e. petitioner No. 7

herein only, for the offence punishable under Section 465 of the Indian Penal Code but dismissed the complaint against rest of the petitioners. Criminal Revision No. 2/2017 was preferred by the respondent No. 2 whereas Criminal Revision No. 27/2017 was preferred by the petitioner No. 7. The learned Additional Sessions Judge allowed both the revisions. He quashed and set aside the order passed by the learned Chief Judicial Magistrate directing process to be issued and directed the learned Magistrate to give opportunity to the respondent No. 2 herein who was the complainant to lead evidence and to examine his witnesses and to pass a fresh order. Hence this Writ Petition.

3. The learned advocate for the petitioners submitted that the petitioner No. 1 is a Company and was intending to acquire lands for expansion of its activity. The respondent No. 2 is a broker who undertook to make available lands for the petitioner No. 1 Company against commission. Pursuant to such engagement petitioner No. 1 Company had paid him different amounts by cheques for acquiring a particular piece of land. However, the transaction could not materialized and with a view to refund the amount received by him and pursuant to a settlement he issued 21 cheques for an amount of Rs. 50,000/- each towards refund. However he honoured only couple

of cheques and the remaining 19 cheques were dishonoured. Therefore the petitioner No. 1 served him with statutory notices, two of which were duly served to him. It was specifically mentioned in those notices that those cheques were issued in terms of the settlement arrived at between the petitioners and him when transaction could not materialized and he in terms of settlement agreed to repay an amount of Rs. 10,50,000/- to the petitioners. He specifically acknowledged his liability in the recitals of the settlement which was witnessed by Charter Accountant Mr. S.R. Maniyar. Since the respondent No. 2 failed to pay the moneys as demanded in the notices, the petitioner-Company had to file complaints under Section 138 of the Negotiable Instruments Act against him in respect of the dishonour of 19 cheques. The process was issued in all those matters. Plea of the respondent No. 2 was also recorded and the cases were posted for leading evidence by the petitioner/complainant.

4. The learned advocate for the petitioners would then submit that while these cases were pending in the Court of Chief Judicial Magistrate, for the first time the respondent No. 2 started disputing the letter of settlement dated 30.04.2007 by alleging that it was forged and fabricated one. He obtained a report of a private Hand Writing Expert which he had received on 08.10.2014 but still he produced that

report along with his complaint in the instant case on 23.01.2015 and alleged that the petitioners have indulged in forgery and thereby have cheated him. His signature on the settlement has been forged and he never executed it. The allegations are clearly concocted and there was absolutely no sufficient reason for the learned Magistrate to proceed to take cognizance and direct a process to be issued.

5. After appreciating all the aforementioned facts and circumstances, the learned Chief Judicial Magistrate had rightly dismissed the complaint as against petitioners No. 1 to 6. In fact he ought not to have issued process even against the petitioner No. 7. The learned Additional Sessions Judge without assigning sufficient and cogent reasons has invoked the powers of revision and has illegally remanded the matter by allowing both the revisions, extending an opportunity to the respondent No. 2 to lead evidence and directing the learned Chief Judicial Magistrate to pass a fresh order. There was no perversity or arbitrariness in the order passed by the learned Chief Judicial Magistrate dismissing the complaint against the petitioners No. 1 to 6 and still the learned Additional Sessions Judge has unnecessarily interfered with. Both the orders therefore may be quashed and set aside. The revision preferred by the respondent No. 2 may be dismissed and one preferred by the petitioner No. 7 may be

allowed.

6. The learned advocate for the respondent No. 2 referring to his affidavit-in-reply submitted that the petitioners are invoking the powers of this Court under Section 482 of the Code of Criminal Procedure and Article 227 of the Constitution of India and the scope for this Court to interfere with the impugned orders is very limited.

7. The learned advocate would submit that the copy of the affidavit in lieu of examination in chief in a complaint filed by the petitioner No.1 under Section 138 of the Negotiable Instruments Act was received by the respondent No. 2 on 18.06.2014 and he approached the police alleging about the forgery by filing complaint on 21.01.2015, therefore there was no delay. Since police refused to take cognizance, the respondent No. 2 had no other alternative but to file a private complaint on 04.03.2015. It is only after going through the affidavit in lieu of examination in chief of the petitioner No. 7 herein that the respondent No. 2 could realize that the former was referring to some letter of settlement. In fact there was absolutely no reference to such letter of settlement in the complaints filed under Section 138 of the Negotiable Instruments Act. Even it was not filed along with the list of the documents produced in these complaints.

8. The learned advocate would then point out that all these

disputed cheques were dated 30.06.2007 whereas the alleged letter of settlement is dated 30.04.2007. The account on which the cheques were purported to be drawn was in fact opened on 18.06.2007. Therefore, if the letter of settlement was really prepared on 30.04.2007, it could not have referred to the cheques in respect of the account which was yet to be opened, by mentioning the cheque numbers containing future date. Thus there was enough substance before the learned Chief Judicial Magistrate pointing out that the petitioners had indulged in forgery and cheating. Ignoring such prima faice material the learned Chief Judicial Magistrate had refused to take cognizance against petitioners No. 1 to 6 but had rightly taken cognizance as against the petitioner No. 7.

9. Lastly, the learned advocate for the respondent No. 2 would submit that when the learned Additional Sessions Judge in his discretion has merely remanded the matter to the learned Chief Judicial Magistrate for a fresh enquiry before directing process to be issued, the discretion cannot be said to have been exercised in-judiciously. No prejudice is likely to be caused to the petitioners if the learned Magistrate records further evidence and passes an order afresh.

10. I have carefully gone through the papers. At the outset it is

necessary to note that in fact the petitioner No. 7 had preferred Criminal Revision Application No. 27/2017 being aggrieved by the order of the learned Chief Judicial Magistrate directing a process to be issued against him for the offence punishable under Section 465 of the Indian Penal Code. If the learned Additional Sessions Judge wanted the matter to be remanded even in respect of the petitioner No. 7 since the other Revision bearing Criminal Revision No. 02/2017 which was preferred by the respondent No. 2 herein was also against the petitioner No. 7, the learned Additional Sessions Judge in the operative part of the impugned judgment and order in Criminal Revision Application No. 27/2017 preferred by the petitioner No. 7 should not have mentioned that he was allowing the revision when the further direction to remand the matter was in fact detrimental to the petitioner No. 7. However, since independently the respondent No. 2 had also preferred Criminal Revision Application No. 02/2017 even in respect of petitioner No. 7 since merely a process under Section 465 of the Indian Penal Code was issued against him, such mistake by the learned Additional Sessions Judge in mentioning that he was allowing Revision Application No. 27/2017 needs to be ignored.

11. Similarly, even the learned Additional Sessions Judge in the point formulated in Criminal Revision Application No. 27/2017 to the

effect as to if the order of the learned Chief Judicial Magistrate directing process to be issued against the petitioner No. 7 for the offence punishable under Section 465 of the Indian Penal Code was erroneous and illegal has answered it erroneously in the affirmative by qualifying it by saying that he was answering it in the affirmative as per the observations in the judgment and the reasoning. The reasoning given by the learned Additional Sessions Judge merely points out as to how the learned Chief Judicial Magistrate simply on the basis of statement of the respondent No. 2 under verification i.e. recorded under Section 200 of the Code of Criminal Procedure could not have formed satisfactory opinion about commission of the offence by the petitioner No. 7 and it is in this sense that the learned Additional Sessions Judge seems to have qualified his answer holding the order passed by the learned Chief Judicial Magistrate to be illegal.

12. Be that as it may, a perusal of the order passed by the learned Chief Judicial Magistrate shows that the learned Chief Judicial Magistrate appreciated the allegations of the respondent No. 2 to the effect that he was questioning genuineness of the letter of settlement dated 30.04.2007 which was purportedly addressed to the petitioner No. 7 who was then a Commercial Manager of the Company. The learned Chief Judicial Magistrate further observed that the

complainant was vaguely asserting that all the petitioners had indulged in forgery but he was unable to specifically allege as to which of the petitioners had forged his signature. However, simultaneously he held that there was prima facie material to show that the petitioner No. 7 was involved in the forgery since the letter of settlement was addressed him. He therefore held that there was no material to infer that the petitioners No. 1 to 6 were involved in the forgery.

13. As is mentioned earlier, according to the respondent No. 2, this letter of settlement is forged and since it was in favour of the petitioner No. 1 Company of which the other petitioners are the Chairman, Managing Director, General Manager and Account Managers, all of them have indulged in the forgery. A careful perusal of the complaint shows that the respondent No. 2 admitted that he was acting as a broker and the petitioners were insisting him to help them in acquiring/purchasing land. It is at their request that he had agreed to work. He specifically alleged that the petitioners insisted him to issue cheques by way of assurance and it is accordingly they made him to open an account with ICICI bank on 18.06.2007 and got those 21 cheques issued by him. He specifically alleged that the cheques were never issued towards any debt and he had never authorized them to present the cheques for encashment. He thereafter alleged that since

later on a dispute arose between the petitioners and him, he asked them to pay him the amount of commission in respect of the earlier transactions to which he was entitled to and also demanded back the cheques. But the petitioners refused to return the cheques. He then alleged that it is during the pendency of the cases under Section 138 of the Negotiable Instruments Act when affidavit in lieu of examination in chief was filed along with the disputed letter of settlement that he realised that it was fabricated one and was brought into existence to demonstrate that he was acknowledging his liability to pay the money. He therefore came to know about its existence only in June 2014. He specifically denied his signature on that letter of settlement.

14. If such is the state of affairs, it is necessary to note, genuineness or otherwise of this letter of settlement would be a point in issue directly and substantially in those proceedings filed by the petitioners under Section 138 of the Negotiable Instruments Act. For this reason alone, it would not be appropriate and would be rather obnoxious to allow a parallel enquiry to look into and examine its genuineness in the present complaint. Obviously, the respondent No. 2 would be entitled to agitate about the letter of settlement being forged and fabricated and is entitled to take such defence in those cases under Section 138 of the Negotiable Instruments Act and even the Magistrate

would be obliged to deal with and decide it by extending opportunity to him to lead evidence.

15. Needless to state that as has been held in the case of **Iqbal Singh Marwah v. Meenakshi Marwah; (2005)4 SCC 370** since the alleged forgery is in respect of a document which was not filed in the Court and has been filed for the first time along with the affidavit of examination in chief, the respondent No. 2 has no option to invoke the provisions of Section 340 of the Code of Criminal Procedure and the only remedy available to him would be filing a private complaint which he already has.

16. If such is the state of affairs, in my considered view, even if the learned Additional Sessions Judge has quashed and set aside the order passed by the Magistrate and has remanded the matter to him for passing a fresh order, no prejudice is likely to be caused to the petitioners or to the respondent No. 2 if the complaint is directed to be stayed at this stage without requiring the learned Chief Judicial Magistrate to undertake any further exercise till the cases under Section 138 of the Negotiable Instruments Act do not reach finality. All these intricacies have not been considered by the learned Additional Sessions Judge and even the learned advocates for the parties herein have lost sight of this aspect of the matter.

17. Considering all the aforementioned aspects, though there is no apparent illegality in the orders passed by the learned Additional Sessions Judge in both the revisions in remanding the matter to the learned Chief Judicial Magistrate for passing a fresh order directing the process to be issued or otherwise, it would be appropriate to defer this entire process and stay the complaint filed by the respondent No. 2 *sine die* till the cases filed by the petitioners under Section 138 of the Negotiable Instruments Act reach finality.

18 The Writ Petition is therefore dismissed. However, the learned Chief Judicial Magistrate shall not proceed with the complaint filed by the respondent No. 2 till the cases filed against him under Section 138 of the Negotiable Instruments Act reach finality.

(MANGESH S. PATIL, J.)

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